



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

MAR 14 2018

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Request for a Waiver from Section 1, Paragraph 6 of
Executive Order 13770

FROM: *for* Kevin S. Minoli *justina jugh*
Principal Deputy General Counsel and
Designated Agency Ethics Official

THROUGH: Matthew Z. Leopold *mzf*
General Counsel

TO: Donald F. McGahn II
Counsel to the President
The White House

This memorandum requests a waiver from Section 1, paragraph 6 of Executive Order 13770 (January 28, 2017) for Alexandra Dapolito Dunn, Regional Administrator of Region 1 at the United States Environmental Protection Agency (EPA). Prior to her appointment, Ms. Dunn served as Executive Director and General Counsel of the Environmental Council of the States (ECOS), which is the national nonprofit, nonpartisan association of U.S. state and territorial environmental agency leaders. Ms. Dunn began service at EPA on January 7, 2018 and received her initial ethics training on January 9, 2018.

EPA requests this waiver to allow Ms. Dunn to work personally and substantially on specific party matters involving her former employer, ECOS.¹ As Regional Administrator, Ms. Dunn is the leader of her Region and part of the Agency's political team. Her area of responsibility includes Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. In the role of Regional Administrator, Ms. Dunn is expected to communicate freely with the states in her region and any organization that collectively represents the interests of those states.

BACKGROUND

On January 28, 2017, President Trump signed Executive Order 13770, "Ethics Commitments by Executive Branch Appointees." All individuals appointed to political positions

¹ Any reference to ECOS also includes the Environmental Research Institute of the States (ERIS).

Commitments by Executive Branch Appointees.” All individuals appointed to political positions on or after January 20, 2017 are required to sign the Ethics Pledge, which sets forth the former employer restriction at Section 1, paragraph 6:

I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

Ms. Dunn signed the Ethics Pledge on January 9, 2018. Thus, Ms. Dunn requires a waiver to work on any particular matter involving her former employer, ECOS. Section 3 of Executive Order 13770 allows the President or his designee to grant a waiver of any restriction contained in the Ethics Pledge.

ANALYSIS

Ms. Dunn has over two decades of experience in environmental law, legislation, policy and regulatory affairs. She is a published author and speaks regularly on environmental policy, sustainability, and environmental justice. Ms. Dunn was recently elected to the Board of Regents of the American College of Environmental Lawyers, and she serves on the Executive Committee and Board of Directors of the Environmental Law Institute. Ms. Dunn has chaired the American Bar Association’s (ABA) section of Environment, Energy, and Resources, its World Justice Task Force, and served on the ABA Presidential Task Force on Sustainable Development. Prior to joining ECOS in 2014, Ms. Dunn served as Executive Director and General Counsel for the Association of Clean Water Administrators.

ECOS is the national nonprofit, nonpartisan association of U.S. state and territorial environmental agency leaders. ECOS was established by state governments in December 1993 as a 501(c)(6) organization that operates using dues from its state government members as well as federal and private sources of funding. The purpose of ECOS is to improve the capability of state environmental agencies and their leaders to protect and improve human health and the environment of the United States.

As Executive Director and General Counsel for ECOS, Ms. Dunn oversaw advocacy and management of the organization and represented the interests of the nation’s environmental commissioners. She worked in all environmental media and had extensive interaction with Federal Agencies, Congress, press and other stakeholders. She also helped state governments improve water infrastructure, air pollution control, site cleanup, chemical management, and economic development.

The research arm of ECOS is known as the Environmental Research Institute of the States (ERIS) and is a 501(c)(3) nonprofit organization focused on educational and research issues. ECOS and ERIS have extensive experience coordinating national meetings, coordinating states and other stakeholders on environmental issues, and working closely with EPA through cooperative agreements. Each year, ECOS organizes two membership meetings that bring together state environmental commissioners with EPA and other stakeholders to discuss a variety

of environmental and public health issues.

Over the years, EPA has partnered with ECOS and ERIS on various matters, workgroups, trainings and conferences. EPA works closely with ECOS given the organization's focus on the level at which national and state environmental policy merge. Also, states share responsibility with EPA in protecting human health and the environment. With respect to many of EPA's statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with state governmental entities on a continuing and frequent basis. And ECOS plays a significant role in facilitating those interactions and ensuring a quality relationship between federal and state agencies.

In this situation, the same rationale that is used to exempt states from the definition of "former employer" in the Ethics Pledge,² should also be used for Ms. Dunn's previous employment with ECOS. Without a waiver, Ms. Dunn cannot attend the ECOS membership meetings where senior level EPA employees normally interact with state environmental leaders and other stakeholders. She would also not be able to participate or be briefed on any associated EPA-ECOS collaboration on the current Administration's policies and priorities related to regional-state relationships.

As Regional Administrator, Ms. Dunn is expected to communicate freely with states in Region 1. Similarly, she should be allowed to interact with the national organization representing the collective interest of those states. Given the extensive history between EPA and ECOS, there will be specific party matters involving ECOS that will rise to the level of Ms. Dunn's attention, merit her participation and raise nationally significant issues. Her participation in such matters will be of importance to the Administrator, especially with regard to cooperative federalism, and therefore, in the Agency's interests.

REQUEST FOR A WAIVER

For the reasons set forth above, EPA respectfully requests a waiver of the provisions of Section 1, paragraph 6 of the Executive Order to enable Alexandra Dapolito Dunn to effectively carry out her duties as Regional Administrator for Region 1 and to advance the interests of the EPA. Please note that, if granted, Ms. Dunn will not be permitted to make any decisions or recommendations regarding funding by EPA for ECOS or ERIS. She will otherwise fully comply with the requirements imposed by the President's Ethics Pledge and with all applicable federal ethics laws and regulations.

Please feel free to contact the EPA Chief of Staff, Ryan Jackson, at (202) 564-4700 or Jackson.Ryan@epa.gov or me at (202) 564-8040 or Minoli.Kevin@epa.gov if you have any questions.

² See Executive Order 13770, Section 2(j), which provides that " 'former employer' does not include...State or local government."

MEMORANDUM

TO: KEVIN S. MINOLI
PRINCIPAL DEPUTY GENERAL COUNSEL AND
DESIGNATED AGENCY ETHICS OFFICIAL
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

FROM: DONALD F. MCGAHN II
COUNSEL TO THE PRESIDENT
THE WHITE HOUSE

DATE:

SUBJECT: Waiver of Section 1, Paragraph 6 of Executive Order 13770

Official: Alexandra Dapolito Dunn
Regional Administrator
Region 1

After reviewing your waiver request memorandum, I hereby waive the requirements of Section 1, paragraph 6 of Executive Order 13770 to Ms. Alexandra Dapolito Dunn to allow her to participate in particular matters involving the Environmental Council of the States (ECOS) and Environmental Research Institute of the States (ERIS). I have determined that it is in the public interest to grant this waiver because of Ms. Dunn's extensive environmental experience and the importance of her involvement in ECOS and ERIS matters to assist with the Administrator's priorities related to cooperative federalism.

In light of the importance of the aforementioned efforts to the Trump Administration and to the United States Environmental Protection Agency, a waiver of the provisions of paragraph 6 of the Ethics Pledge (contained in Section 1 of Executive Order 13770) is justified for Ms. Dunn so that she can effectively carry out her duties as Regional Administrator of Region 1 and ably advise the EPA Administrator. Accordingly, I authorize Alexandra Dapolito Dunn to be able to participate personally and substantially in matters regarding ECOS. She will not, however, be permitted to make any decisions or recommendations regarding funding by EPA for ECOS or ERIS. I understand that she will otherwise fully comply with the remainder of the requirements imposed by the President's Ethics Pledge and with all applicable federal ethics laws and regulations.

Donald F. McGahn II
Counsel to the President

Dated: _____